



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN CHINA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales en China

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Chine

Rapport national pour la recherche comparative et collaborative de l'AIMJF

Hongwei ZHANG¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in China.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en China

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Chine.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational

¹ Professor/Ph.D., Dean
School of Humanities/Juvenile & Family Law Research Center
Jinan University at Zhuhai



judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. Right to be heard

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, children are presumed to be capable witnesses conditionally.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

Yes. A child is a competent witness if they can demonstrate adequate ability of exception and discrimination (*Criminal Procedure Law of 2018*, Article 62). The relevant authorities such as the police department and procuratorate should carefully review various aspects of children's statements before deciding whether to adopt the statement (*Opinions on the handling of criminal cases of sexual abuse of children*, Supreme People's Procuratorate et al., Article 30). These aspects usually include the original time and background of statements, ability of memory, expression and discrimination of the children, and so

on(ibid.). It is important to consider the mental and physical characteristics of children of lower age when there are contradictions occurring in their statements(ibid.).

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Everyone who knows something about the case have obligation to be a witness (*Criminal Procedure Law of 2018*, Article 62). Therefore children are responsible for being witnesses once they are qualified as a witness and do know something about the case.

2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes. The *Criminal Procedure Law of 2018*, *Guidelines for Criminal Prosecution Involving Children*(Supreme People's Procuratorate, 2017), *Opinions on the handling of criminal cases of sexual abuse of children*(Supreme People's Procuratorate et al., 2023), and related laws specifically provide for the participation of child victims/witnesses in criminal proceedings.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

China has constructed a one-step handling system for cases of violation of child victims, to reduce the secondary harm suffered by children in formal criminal proceedings. Courts, procuratorates, and police departments will cooperate to provide necessary psychological intervention, economic assistance, school transfer and placement, and other protective measures for child victims. The questioning and physical examination of child victims and witnesses by the above departments will be completed in one go at the one-stop evidence collection centre(*Opinions on the handling of criminal cases of sexual abuse of children*, Supreme People's Procuratorate et al., Article 39).



2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

First, the police departments should investigate a case as soon as they become aware of a possible offense against a child. The pre-investigation review should not take longer than seven days. Next, the procuratorate will review the case referred to them by the police department and determine whether to prosecute the suspect. In the third step, the court will conduct a trial, and typically, child victims or witnesses are not required to testify in court. Additionally, the police department, procuratorate, and court must promptly inform the child victim and their representative of the progress and outcome of the case.

2.4. In which moment(s) can a child be heard in this procedure?

Interviews are most likely to be carried out during investigations by the police department or the procuratorate.

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

In any case, if a child victim and their representative believe that the police department should have opened a case but failed to do so, they have the right to object to the procuratorate. The procuratorate is then responsible for reviewing the objections and, if deemed valid, notifying the police department to open an investigation.

3.Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

Yes. These materials include reminders for child victims/witnesses about the presence of legal representatives or appropriate adults, the process of the case, their rights to a safe and supportive environment, legal representation, mental health, and privacy, and how to complete a psychological evaluation(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 125,135,137).

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

While providing the legal documents, investigators also orally explain in child-friendly language before interviewing/hearing. The law only requires investigators inform the child victim/witness of the information before the hearing, but it does not specify how far in advance.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

Yes, the purpose of the assessment is to determine the child victim/witness's ability to comprehend and testify (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 138). This is done in order to create an interview outline that takes into account their physical and psychological characteristics, with the ultimate goal of safeguarding their legal rights and overall well-being. Typically, the procuratorate is responsible for conducting these assessments, and the findings will be incorporated into the interview outline for each individual case.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

Before the start of any interviews/hearing, the procuratorate or other investigator must notify the child's parents or legal guardians by telephone, visit, etc., and have them present (*Criminal Procedure Law of 2018*, Article 281). However, there is no specific type of evaluation with the parents or legal guardians.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

Interviews/hearing take place primarily at the child's residence or other places where the child feels safe(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 126).

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Yes. The court, procuratorate, and police department will take the initiative to remind children to apply for psychological, social, medical, legal, and educational assistance in criminal proceedings or directly contact welfare services for children(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 74-76).

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

The Supreme People's Procuratorate mandates that any case officer should closely monitor the psychological state of child during interviews and hearings(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 127).

4.2. In case of identification of risks, what kind of protective measures are available in your country?

The case officers need to make necessary adjustments or halt the interview or hearing if the child's well-being is at risk, in order to prevent any further harm to minors during the criminal process(*ibid.*).

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)



The procuratorate, court, police department, and other state bodies provide financial subsidies for children's access to lawyers, medical care, education, and maintenance; psychological assessment and support throughout all criminal proceedings; assist for children in changing their guardianship. The procuratorate will regularly visit the child who has received support to adjust the program to better meet the child's specific needs.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

A child who is a victim of intrafamilial violence may apply for a personal protection order through the court (*Anti-domestic Violence Law*, Article 23). If the child himself/herself is unable to apply due to intimidation or physical constraints, his/her other family members, police departments, rescue organisations, etc. can apply as a representative of the child (ibid.). Other members of the family can also apply for a personal protection order when they are subjected to domestic violence, and they can also apply for short-term shelter at the women's and children's shelters in every city.

In addition to the state's zero-tolerance policy against cases of child abduction or child kidnapping, child protection and welfare agencies provide child victims with medical, mental health, and compulsory education services. Every city in China has a network of child welfare agencies that offer these services.

5.Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

Interviews and hearings in most cases take place at the child's residence. Interviews/hearings can also take place in the procuratorate's office if the child and their guardians agree (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 126).

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate ‘building’ specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

Yes. If the interview or hearing takes place in the procuratorate’s office, there must be a separate space specifically designed for children, decorated with items that will make them feel comfortable and relaxed(ibid.).

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

The core guideline for the environment is that "it should make children feel safe". The picture below shows a specialised place for interviewing/hearing children in Shanghai, China.



5.4. Is there a specific waiting area for the child?

Yes.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

In general, the alleged offender will not have direct contact with the child. Child victims and witnesses may meet the alleged offender when giving evidence in court, but this is

very rare(*Judicial Interpretation of Criminal Procedure Law of 2021*, Supreme People's Court, Article 558).

5.6. In case identification of the offender is needed, how is this conducted, and where? Child victims/witnesses will complete the identification of the offender independently with the assistance of two investigators at least (*Provisions on the Procedures for Handling Criminal Cases by Police Departments of 2020*, Ministry of Public Security, Article 258-260). The objects of identification, such as photographs of the alleged offenders, will be mixed with similar objects (ibid.). As the investigation of child victims/witnesses by the procuratorate and other departments should be completed as much as possible in one go, the identification will be done at the same time and place as the interviews/hearings.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

Investigators will travel to the child's location to conduct off-site investigations and interviews.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

Yes, if the interviewer deems it necessary, they may request assistance from the police department of the city where the child is living to conduct the interview virtually. The virtual interview must be audio-visually recorded.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

The record of investigative interviews is admitted as evidence in court. Child victims/witnesses are required to testify in trial by the court only when the case is so complex that there is nothing but make the child comes into tribunal(*Judicial Interpretation of Criminal Procedure Law of 2021*, Supreme People's Court, Article 558).

Child victims and witnesses will be given special protection by the court when they appear in the trial, and their physical and vocal characteristics will be technically processed so that they cannot be recognised by others(ibid.).

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

Yes, children have the right to legal assistance for free. Once a case is transferred from the police department to the procuratorate, child victims and witnesses who are in poverty or do not a lawyer are eligible to receive free legal assistance(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article75).

6.1.1. What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

They have the right to act as victim's agent and have the same procedural rights as other advocates in criminal proceedings. They must participate in criminal proceedings based on the principle of prioritizing the child's welfare(*Minors Protection Law of 2020*, Article 4).

6.2. Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

Yes. Their role is to gather information about the case, comfort the child, help them understand the procedure, and monitor the work of the investigators to ensure that the child's rights are not violated (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article46-47). Any participation of children in criminal proceedings must be accompanied by their parents or other . Otherwise, the results of an interview with a child have a less legal effect(*Judicial Interpretation of Criminal Procedure Law of 2021*, Supreme People's Court, Article 90).

6.3. What is the role of parents/legal representative?

Parents/legal representatives can exercise the procedural rights of children on their behalf, and act as support persons (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 47).

6.3.1. When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

Parents/legal representatives who have violated children's rights will be excluded. In addition to this, parents/legal representatives who are unable to be present due to death, illness, transport difficulties, or other legal restrictions, and whose presence would negatively affect the testimony of the child, will also be excluded (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 46).

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

Appropriate adults will take on the responsibilities of parents. Other adult family members of the child, teachers, and government representatives at the place of residence can serve as appropriate adults (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 46). Additionally, staffs from child protection organizations can also act as appropriate adults (ibid.).

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

Firstly, children are not required to testify in the trial in the vast majority of cases (*Judicial Interpretation of Criminal Procedure Law of 2021*, Supreme People's Court, Article 558). Second, video and audio recordings of interviews with children played in the trial will be technically processed so that the children's personal characteristics are not recognizable (ibid.). Additionally, police and other investigators should refrain from public contact with children in uniform during the pre-interview investigation (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 100).

6.5. Is the child allowed to plea for cautionary measures?

Yes. For instance, the procuratorate cannot interview child victims/witnesses in the procuratorate office if the child don't agree to do so(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 126).

6.6. Does the child have the right to appeal any decision?

If a child victim is dissatisfied with a court's decision not to prosecute, or not to prosecute conditionally, he or she may protest to the court or procuratorate(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 178, 192, 202).

7. Interviewing structure and procedure

7.1. Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

The police or prosecutor hears the child victim/witness in the pre-trial phase and the judge in the trial phase. A child usually be heard once in total. Chinese law requires that a child victim may be interviewed only once unless there is new evidence needed to verify or other special circumstances(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 129). An interview may be divided into multiple segments, and children should be given a break after each segment exceeds one hour(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 127).

7.2. Is it mandatory that this professional has specific training for child interviews?

Yes.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)?

If so, which one? If so, could you please share it?

There is no universal interview protocol. Investigators need to develop a specific protocol for each case, depending on the circumstances of the case and characteristics of the child(*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 134).



7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

The investigator and the child's parent/legal representative/appropriate adult are allowed to participate in the interview/hearing. These participants should be in the same room with the child. Additionally, there must be at least one female investigator present if the child is a girl.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

Only the interviewer. Cross examination is not allowed.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

This is permissible. Interviews with children should be conducted in such a way that allows the child to fully understand the question and express himself/herself (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 131).

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

Yes. The audio and video can be used as evidence in court.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

Usually, image and voice distortion will be applied as protection measures (*Opinions on the handling of criminal cases of sexual abuse of children*, Supreme People's Procuratorate et al., Article 15).



7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

The recording must capture the entire interview without any gaps, and no one may edit or alter these recordings. When the recording of the interview fails, transcripts verified by children and their legal representatives have the same legal effect.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

Yes. The statement of interview should be reviewed and signed by the child and his/her legal representative otherwise the statement has no legal effect (*Guidelines for Criminal Prosecution Involving Children*, Supreme People's Procuratorate, Article 124, 143).

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

Procedures for interviewing adult witnesses should not be used to interview children in any case.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

The alleged offender and his/her defence attorney is not allowed to participate in the interview of the child witness.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

The offender is not allowed to make additional questions to the child. However, the offender can contradict the child's statements in the trial (*Criminal Procedure Law of 2018*, Article 61).



9.Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

No.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

If the police have already interviewed a child victim/witness, the relevant records shall be transferred to the procuratorate and the court. These two departments will not interview the child again. All interviews and assistance will be done in a one-stop evidence collection centre without complicated collaborative procedures.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

The child should only be re-interviewed if it is necessary to discover the whole truth of the case or if there is other situation that requires it. The record of the re-interview should be placed in the case file.

10. Training

10.1. Are judges and magistrates trained to deal with child victims?

Yes. Courts, procuratorates and police departments at all levels in China regularly organise professional training and lectures on how to deal with child victims.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

The content of the training covers laws related to child protection and safety, as well as child psychology physiology and other items related to children's interests. All staff work directly with child victims/witnesses should participate in the training.



11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

China is promoting the nationwide expansion of the one-stop evidence collection center for handling cases of offences against children. A total of 2,053 comprehensive assistance centers have been established (Supreme People's Procuratorate, 2023).